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Alta Industries v. Lynn P. Hurst : Reply Brief

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

ALTA INDUSTRIES LTD., a Utah limited partnership, dba STEELCO, and ALTA INDUSTRIES - UTAH, INC., a Utah corporation, in its capacity as general partner of Alta Industries Ltd., Plaintiffs, Appellees, and Cross-Appellants, vs. LYNN P. HURST and WASATCH STEEL INC., a Utah corporation, Defendants, Appellants, and Cross-Appellees.	Supreme Court No. 900612 Priority No. 16

REPLY BRIEF OF PLAINTIFFS-APPELLEES ON CROSS-APPEAL

Appeal from the Third Judicial District Court of
Salt Lake County, State of Utah
The Honorable Leonard H. Russon, District Judge

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INTRODUCTION

This Reply Brief addresses only those matters raised by the cross-appeal of plaintiffs-appellees Alta Industries Ltd. dba Steelco and Alta Industries - Utah, Inc. (hereinafter, "Steelco"). Steelco's opening Brief on the cross-appeal is found at pages 80-91 of its "Brief of Appellees and Cross-Appellants." The

Response of defendants-appellants to that cross-appeal is found at pages 44-51 of the "Reply Brief of Defendants/Appellants and Reply to Cross-Appeal."

This Reply Brief does not reply to the remainder of the Reply Brief of defendants-appellants because the rules do not permit such a reply. Rule 24(c), Utah Rules of Appellate Procedure. Steelco has filed a Motion to Strike the Reply Brief of defendants-appellants because it impermissibly introduces extensive materials (including 20-odd pages of factual argument) that were not limited to answering the matters set forth in Steelco's Brief. That Motion was unresolved as of the date of filing of this Brief.

The trial court found for Steelco on its fraud, conversion, and conspiracy theories, but upon purely legal grounds rejected Steelco's claims for the same losses under the Racketeering Enterprises Act and under Utah's receiving stolen property statute. Steelco's cross-appeal challenges only the trial court's rejection of its racketeering and statutory receiving stolen property claims.

ARGUMENT

Steelco's claims under the Racketeering Enterprises Act and receiving stolen property statute arise from a relatively simple, often repeated, factual pattern. The claims involve the same three persons -- Volma Heaton and Chris Williams, who were both

then employees of Steelco, and defendant Lynn Hurst, who was then general manager of defendant Wasatch Steel. Over a four-plus year period, Volma Heaton stole on the order of 100 loads of steel from his employer, Steelco, and delivered that steel to Wasatch Steel. [R336, et seq.; Findings of Fact ¶¶6, 8, 11.] [R451 at 6, 148-50.] Chris Williams sometimes assisted Heaton in his deliveries and accompanied him on his trips to Wasatch Steel. [R451 at 6, 148-50.] The fact that Heaton stole this steel from his employer, Steelco, and delivered it to Wasatch Steel is not disputed. It is also not disputed that Wasatch Steel paid Heaton only a fraction of the value of the steel, as the court found. [Findings of Fact ¶27; R343; R450 at 52-53.] The trial court found that both Hurst and Wasatch Steel knew that Heaton was stealing the steel materials from Steelco and delivering and reselling them to Wasatch Steel. [R338; Findings of Fact ¶13.] Indeed, the trial court found a fraud and conspiracy between Wasatch Steel and Hurst, on the one hand, and Volma Heaton, on the other hand, to steal material from Steelco for use and resale by Wasatch Steel. [Findings of Fact ¶¶14, 15, 26; R339, et seq.]

The trial court also found that Wasatch Steel and Hurst paid at least eleven kickbacks to the very same Steelco employees involved in the theft scheme -- Volma Heaton and Chris Williams. [R344-45; Findings of Fact ¶32.] Wasatch Steel and Hurst paid those kickbacks to Steelco's employees to induce them to cause

their employer, Steelco, to pay more for materials purchased from Wasatch Steel than would otherwise have been paid. [R345-47; Findings of Fact ¶¶33, 34.] The trial court similarly found both a fraud and a conspiracy between Wasatch Steel and Hurst, on the one hand, and Heaton and Williams, on the other hand, to inflate the prices paid by Steelco for materials that it purchased from Wasatch Steel. [R345, et seq.; Findings of Fact ¶¶33-45.]

Steelco's racketeering and receiving stolen property claims arise from the theft and bribery transactions generally outlined above. Although these theories afford recovery of the very same losses for which the court gave Steelco judgment under conversion, fraud, and conspiracy theories, the measure of damages and the statutory entitlement to attorney's fees available under these laws gave rise to Steelco's cross-appeal.

I. THE RACKETEERING ENTERPRISES ACT CLAIM

At pages 80-86 of its opening Brief, Steelco demonstrated that it had proved, and the court had found, each element to defendants' liability under the Racketeering Enterprises Act, Utah Code Ann. §§76-10-1601, et seq. (the "Act"). Defendants' responsive Brief at pages 45 to 48 contains four points, which are addressed in turn.

A. The Separate Victim Theory. Defendants preliminarily argue that the trial court found that Steelco had established none of the elements for a racketeering claim. The record does

not support that position. The trial court in its Memorandum Decision stated only the following with respect to its rejection of Steelco's racketeering claims:

> 25. The acts of the parties herein do not bring them within the racketeering act. The necessary requirements are not met. The Court finds that for the racketeering act to apply, there must be three similar episodes that involve separate and different entities, and not within the same entity. The purpose of the racketeering act is to prohibit racketeering. That is, to prohibit illegal businesses being set up to defraud other businesses or people as a racket.[1] The fact that there were similar episodes involving Heaton and Wasatch Steel do not satisfy the requirements. [R279.] (Emphasis added)

Thus, the only shortcoming advanced by the court in plaintiffs' racketeering claim was plaintiffs' failure to show three similar episodes of unlawful activity "that involve separate and different entities."

Consistently, the Findings of Fact entered by the trial court at paragraph 62 stated as follows:

> 62. Plaintiffs did not prove the existence of three similar episodes of unlawful activity that involve separate and

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[1]The trial court seems to have believed that the Act was limited to "illegal businesses" that were created to defraud multiple victims "as a racket." Both the Utah Court of Appeals and the United States Supreme Court have held that the Act "is not limited in application to persons affiliated with organized crime." State v. Thompson, 751 P.2d 805, 815 (Utah App. 1988).

> different entities, as is required by the Racketeering Act. Plaintiffs demonstrated only that Wasatch Steel Inc. and Hurst engaged in episodes of unlawful activity involving Steelco, but not any other persons or entities. [R359.]

Defendants suggest in their Brief that this "terse" finding was somehow incomplete or flawed. However, defendants stated expressly to the trial court that they took "no exception" to this very finding [R315] and did not suggest or request any other findings on this issue in their 39 pages of objections to the Findings and Conclusions. [R283, et seq.]

The provisions quoted above constitute all of the court's reasoning for its rejection of Steelco's racketeering claim. As is readily apparent, the only basis advanced by the court was Steelco's failure to demonstrate three or more episodes of unlawful activity involving more than one victim. Steelco's opening Brief at pages 84-86 demonstrates that the Act does not require more than one victim; indeed, the Act requires that the episodes of unlawful activity "have the same or similar purposes, results, participants, victims, or methods of commission. . . ." (Emphasis added.) Utah Code Ann. §76-10-1602(2). Defendants' Brief does not make any effort to sustain this exclusive basis for the court's decision.

Instead, defendants advance the following three arguments, none of which were found, or even mentioned, by the trial court

in either its Memorandum Decision or in its Findings of Fact and Conclusions of Law.

B. Steelco Showed a Predicate Offense. The trial court's Findings establish clearly three and perhaps four predicate offenses:

Theft. Section 76-6-404 defines theft as follows:

> A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

The court found that "Heaton stole from Steelco all of the" materials for which recovery is sought in this case. [Findings of Fact ¶11; R338.] The court found that Hurst and Wasatch Steel knew that Heaton was stealing the materials. [Findings of Fact ¶13; R338.] The court also found that "Wasatch Steel Inc. and Hurst intentionally exercised dominion and control over the Stolen Steel that was stolen by Heaton from Steelco and delivered to Wasatch Steel Inc." and that "Wasatch Steelco Inc. and Hurst wrongfully, intentionally, and willfully exercised dominion and control over the Stolen Steel in violation of the rights of Steelco and without lawful justification and intended to deprive Steelco of the Stolen Steel." [Findings of Fact ¶¶18, 20; R340-41.] Defendants do not even address theft as a predicate offense or these findings by the court that such thefts occurred.

Receiving Stolen Property. As discussed under point II of this Brief, the trial court did reject a finding of civil liability for Wasatch Steel and Hurst's receipt of stolen property under the receiving stolen property statute, which expressly requires that the defendant be a person dealing in used or secondhand property. However, the court found all elements necessary to establish the crime of receiving stolen property under Subsection 1 of the same statute, §76-6-408(1), which is an enumerated predicate offense under the Act and which does not have any requirement that defendant be a dealer in used goods. Utah Code Ann. §76-10-1602(4)(n). Section 76-6-408(1) provides as follows:

> (1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

As shown in the preceding section, the court specifically found that Wasatch Steel and Hurst received steel stolen from Steelco knowing that it had been stolen and sold and disposed of that steel, knowing it to have been stolen, with a purpose of depriving Steelco thereof.

Bribery. Section 76-10-1602(4)(s) makes "bribery or receiving bribe by person in the business of selection, appraisal, or

criticism of goods, Section 76-10-508" a predicate offense. Section 76-6-508 provides that such a person is guilty of bribery if "he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal, or criticism." The court unquestionably found that Volma Heaton and Chris Williams accepted the kickbacks to cause them to artificially inflate the prices their employer paid for steel sold by Wasatch Steel. [Findings of Fact ¶¶32, 33, 34, 35, 36; R344-48.] It is true that the trial court did not in its Findings state that either Heaton or Williams was "in the business of selection, appraisal, or criticism of goods." Section 76-10-1602(4). The court did find, however, that both Heaton and Williams "participated in the ordering and purchasing by Steelco of certain steel products" and "were in a position at Steelco to influence the prices that Steelco paid for certain steel that Steelco purchased from others, including Wasatch Steel Inc." [Findings of Fact ¶31; R344.] Whether that finding renders Williams and Heaton a "person in the business of selection, appraisal, or criticism of goods" is a question of law for this Court's decision. If Heaton and Williams were such persons, all of the elements of bribery have been established.

Aiding, Soliciting, and Conspiring. Defendants casually dismiss conspiracy as a predicate offense by stating that conspiracy, by itself, cannot constitute a predicate offense.

[Defendants' Brief, p.46 n.10.] However, the Act provides that a predicate offense is committed not only if one actually commits an enumerated offense himself or herself, but also if one solicits, requests, commands, encourages, intentionally aids or conspires to engage in any specifically enumerated predicate offense. Utah Code Ann. §76-10-1602(4). Defendants ignore this language. As noted above, the court found that Volma Heaton committed multiple thefts and that all elements of the crime of bribery had been shown with respect to Williams and Heaton (provided that Williams and Heaton were in the business of selecting goods). The court specifically found that Hurst and Wasatch Steel assisted, aided, requested, and conspired with Williams and Heaton with respect to these thefts and bribes. [Findings of Fact ¶¶14, 15, 32, 33, 34, 42, 43, 44; R339, et seq.] Thus, by assisting and conspiring with Williams and Heaton in their independent crimes of theft and bribery, Hurst and Wasatch Steel themselves committed predicate offenses under Section 76-10-1602(4).

Only one predicate offense is required, but Steelco proved three or four. Defendants' remaining two arguments cannot properly be considered on appeal, since neither of them was properly raised below. E.g., Turtle Management, Inc. v. Haggis Management, Inc., 645 P.2d 667, 672 (Utah 1980). Defendants' written final argument is found at R387, et seq. The only basis

advanced there for rejecting Steelco's racketeering claim is the failure to show a predicate offense. [R401-05.] After the trial court decided the case, defendants did not suggest or request any findings or conclusions on the two new theories, which are presented for the first time in defendants' Reply Brief. [R283.] Defendants' arguments, addressed immediately below, that Steelco failed to show a "pattern of unlawful activity" or an "enterprise" cannot properly be considered by this Court.

C. Steelco Showed a "Pattern of Unlawful Activity". This is another basis advanced by defendants which was never mentioned by the trial court. The parties agree upon the governing statutory definition of a pattern:

> (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. Utah Code Ann. §76-10-1602(2).

Following is a complete description from defendants' Brief of the deficiency they claim exists in Steelco's proof of a pattern in this case:

> At most, plaintiffs' claims assert multiple acts to promote the same transaction or episode. There was only one actual or potential victim and no evidence of a broader

> set of criminal objectives. In short, there was no pattern of racketeering activity. [Defendants' Brief, p.47.]

Both the Utah courts and governing federal authority reject defendants' argument. In State v. Thompson, 751 P.2d 805, 816-17 (Utah App. 1988), the Utah Court of Appeals analyzed the analogous federal authorities and rejected defendant's position. In Thompson, defendant argued that several bribes could not constitute a pattern because the bribes were "part of only a single episode of racketeering conduct" [Id. at 816] and "were in furtherance of a single criminal objective" [Id. at 817.] The Court rejected that argument holding that separate bribes that were a part of the same overall scheme constituted a "pattern" under the Act.

The Act's statutory definition of pattern requires (i) at least three episodes of unlawful activity, (ii) some relationship between the activities, and (iii) some showing of continuity of the unlawful conduct. Although the definition of pattern in the federal RICO Act is not so comprehensive, the federal courts have by interpretation adopted what in Utah is the statutory definition of pattern. E.g., Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 n.14, 105 S.Ct. 3275, 3285 n.14 (1985); and, more recently, H.J. Inc. v. Northwestern Bell Telephone Co., 109 S.Ct. 2893, 2899-2902 (1989). Those cases firmly embrace the Utah

statutory definition of pattern and amplify on the requirements of relationship and continuity.

> RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.
>
> For analytic purposes these two constituents of RICO's pattern requirement must be stated separately, though in practice their proof will often overlap. H.J. Inc., 109 S.Ct., supra, at 2900.

The H.J. Court went on to state that the relationship requirement is established "if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics that are not isolated events." Id. at 2901. This language is an almost verbatim quotation of the Utah Act's requirement of "relationship."

Here, the "relationship" requirement is fulfilled as prescribed by the statutory language. The thefts had the same or similar purposes -- acquiring steel stolen from Steelco at bargain prices for resale by Wasatch Steel at a profit. The result was always the same -- in the case of the steel thefts, Steelco lost its steel, and Heaton and Wasatch Steel in substance divided the value between them -- Heaton was paid a fraction of its value, and Wasatch Steel resold it at a handsome profit. In

the case of the bribes, a similar pattern emerged. The amount by which the price paid by Steelco was fraudulently inflated was split between Hurst/Wasatch Steel, on the one hand, and the recipient of the bribe, Williams/Heaton, on the other hand. Again, Steelco lost. The episodes had the same participants -- Wasatch Steel, Hurst, Heaton, and Williams. They had the same victim -- Steelco. They had the same methods of commission -- each theft and delivery and each bribe transaction were virtually identical to the others. Relationship has been established here.

With respect to the "continuity" requirement, there was some division of authority prior to the Supreme Court's decision in the H.J. case. Some courts held that continuity required that a single fraudulent scheme embracing multiple acts was insufficient to establish the pattern requirement. The H.J. Court specifically rejected that position and stated:

> We adopt a less inflexible approach that seems to us to derive from a common-sense, everyday understanding of RICO's language and Congress' gloss on it. What a plaintiff or prosecutor must prove is continuity of racketeering activity, or its threat, simpliciter. Id. at 2901.

The H.J. Court went on to show examples of various methods by which continuity may be proved:

> A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Id. at 2902.

Here, we have on the order of 100 thefts over a four year period of time -- clearly satisfying the continuity requirement. The Supreme Court also identified other methods by which continuity can be established:

> The continuity requirement is likewise satisfied where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes) or of conducting or participating in an ongoing and legitimate RICO "enterprise." Id. at 2902.

Again, Wasatch Steel's receipt over four years of 100-odd loads of stolen steel and its payment of at least eleven bribes, as a matter of law, establish a regular way of conducting Wasatch Steel's ongoing business.

The federal district court cases cited in defendants' Brief were decided prior to the controlling H.J. case, are inconsistent with it, and do not concern multiple criminal acts such as are presented here -- 100-odd discrete thefts and eleven or more discrete bribes. Rather, defendants' cases address whether a single fraudulent scheme, loan transaction, or brokerage account can constitute a "pattern." Steelco respectfully submits that if defendants' knowing receipt of stolen materials on 100-odd occasions and payment of eleven separate bribes over a four year period do not constitute a "pattern of unlawful activity," the requirement cannot ever as a practical matter be fulfilled.

D. Steelco has Shown a Racketeering Enterprise. Defendants' claimed absence of proof of an "enterprise" was also never argued by them or found by the trial court below. Section 76-10-1603 generally requires a showing that there existed an "enterprise" to which any "person" was related through a pattern of unlawful activity. The term "enterprise" is defined in Section 76-10-1602(1):

> (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

This Court in State v. McGrath, 749 P.2d 631 (Utah 1988) adopted a sweeping definition of that language. In McGrath, the Court concluded that an "ongoing association" between defendant and one Marcus established the existence of the requisite enterprise:

> Defendant and Marcus had an ongoing association in fact for the purpose of making money from the sale of controlled substances. Defendant regularly "fronted" drugs to Marcus, who in turn sold them to individual users. When the two men experienced difficulty keeping track of their accounts, they agreed to keep written accounts of their numerous transactions. A ledger book kept by Marcus showed seventy-four transactions between him and defendant. This association was much more than an isolated transaction between an independent seller and buyer conducted at arm's length. Defendant often had others deliver for him and compensated them for their services. Marcus bought his supplies from other sources only when defen-

> dant was unavailable. The two men functioned as a "continuing unit for a common purpose of engaging in a course of conduct." These facts show an ongoing enterprise the purpose of which was to traffic in controlled substances.

Id. at 637. Here, there was a very similar relationship between Heaton and Hurst/Wasatch Steel which established such an "enterprise." Through an ongoing conspiracy, as the trial court found, Heaton systematically stole product from his employer, Steelco, and delivered the stolen goods to Wasatch Steel for resale. Heaton was paid a fraction of the value of the steel with Wasatch Steel receiving the balance in profits. Similarly, in the case of the kickbacks, Hurst/Wasatch Steel, on the one hand, and Heaton and Williams, on the other hand, had an agreement under which Heaton and Williams would cause their employer, Steelco, to pay an inflated price for steel sold by Wasatch Steel, with the price bump being split between Wasatch Steel and/or Hurst, on the one hand, and Williams and Hurst, on the other hand. Since the trial court expressly found that Hurst and Wasatch Steel conspired with Heaton and Williams as just indicated, the trial court made all necessary findings to determine the existence of several "enterprises," both with respect to the steel thefts and the kickbacks -- one between Wasatch Steel/Hurst and Heaton as to thefts, one between Wasatch Steel/Hurst and Heaton as to bribes,

one between Wasatch Steel/Hurst and Williams as to bribes, and one between Hurst and Wasatch Steel as to both bribes and thefts.

Finally, defendants argue that the "enterprise" must be distinct from the "persons" who are defendants in the action. First, as has been demonstrated above, Steelco proved several "enterprises," each of which is distinct from the persons who are defendants in this action. As this Court found in McGrath, an association between a named defendant and another constitutes such an enterprise, which is exactly the situation here. Second, any distinctness requirement applies only to Subsection (3) of Section 76-10-1603. Defendants have cited two cases (Grant v. Union Bank, 629 F.Supp. 570 (D.Utah 1986) and Bennett v. United States Trust Co. of New York, 770 F.2d 308 (2d Cir. 1985), cert. denied, 106 S.Ct. 800 (1986)) that hold that the "enterprise" must be distinct from the "persons" who are defendants in the action under 18 U.S.C. §1962(c). The courts have applied a different rule with respect to 18 U.S.C. §1962(a) and (b), which are substantially similar to Subsections (1) and (2) of Utah Code Ann. §76-10-1603. The courts have held that, with respect to claims under Subsections (a) or (b) of 18 U.S.C. §1962, a named defendant may be both the responsible "person" and the "enterprise" to establish liability under the Act. E.g., Petro-Tech, Inc. v. Western Co. of North America, 824 F.2d 1349, 1361 (3rd Cir. 1987) ("where a corporation engages in racketeering activ-

ities and is the direct or indirect beneficiary of the pattern of racketeering activity, it can be both the [liable] "person" and the "enterprise" under Section 1962(a)"); to the same effect, see Masi v. Ford City Bank & Trust Co., 779 F.2d 397, 402 (7th Cir. 1985); Schreiber Distrib. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (holding that if a corporation is the direct or indirect beneficiary of the pattern of racketeering activity, it can be both the "person" and the "enterprise" for violations under Sections 18 U.S.C. 1962(a) or (b)). Here, Wasatch Steel engaged in racketeering activities and was the direct or indirect beneficiary of the pattern of racketeering activity by (i) purchasing goods known to be stolen at bargain prices and (ii) selling its own goods to Steelco at fraudulently inflated prices. Utah Code Ann. §76-10-1603(1) and (2) are substantially identical to the corresponding provisions of the federal act contained in 18 U.S.C. §1962(a) and (b). Subsection 1 provides as follows:

> It is unlawful for any person who has received any proceeds derived . . . from a pattern of unlawful activity in which the person has participated as a principal, to use or invest, directly or indirectly, any part of that income, or the proceeds of the income . . . in the acquisition of any interest in or the establishment or operation of, any enterprise.

The trial court specifically found that Wasatch Steel used the profits received from resales of the stolen steel in the business

of Wasatch Steel. [Findings of Fact ¶14; R339.] Similarly, the court expressly found that Wasatch Steel received an inflated price for the steel that it sold to Steelco with respect to which kickbacks were paid. [Findings of Fact ¶¶33-35; R345-47.] Five enterprises have been established in this case: (i) the association of Hurst and Wasatch Steel as to both bribes and thefts, (ii) the association of Wasatch Steel/Hurst and Williams as to bribes, (iii) the association of Wasatch Steel/Hurst and Heaton as to thefts, (iv) the association of Wasatch Steel/Hurst and Heaton as to bribes, and (v) Wasatch Steel, a corporation, itself. Only one is required. Finally, an enterprise can be established through the continuing association of Lynn Hurst and Wasatch Steel Inc. to defraud Steelco. That is, Hurst, as an employee of Wasatch Steel, and Wasatch Steel, as a distinct entity, joined together in an association, which is not named as a defendant in this case, to defraud Steelco through the stolen steel and kickback transactions.

II. STEELCO IS ENTITLED TO RECOVER UNDER THE RECEIVING STOLEN PROPERTY STATUTE

Defendants advance two arguments why Steelco should not recover under the receiving stolen property statute: First, defendants claim that they are not included in the class of persons mentioned in Section 76-6-408(2)(d). Second, defendants

claim that there was an inadequate showing that defendants knew the goods were stolen. Each will be addressed in turn.

Section 76-6-412(2) only renders liable "any person mentioned in Subsection 76-6-408(2)(d)." That subsection in turn defines that class of persons as "a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property." Defendants concede, as they must, and the court correctly found that Wasatch Steel is in the business of purchasing and selling used steel. [Findings of Fact ¶3; R335.] Instead, defendants argue with neither authority nor logic that the statute describes and applies only to pawnbrokers. If the legislature had intended the statute to describe and apply only to pawnbrokers, why on earth did the legislature provide that the class of potentially liable defendants includes "a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property. . . ." Defendants' argument entirely reads out of the statute the underscored language. This Court has uniformly held that, in interpreting a statute, effect should be given to "every word of the statute." Madsen v. Borthick, 769 P.2d 245, 252 n.11 (Utah 1988). Further, the words of a statute should be given their "commonly accepted meanings." Hector, Inc. v. United Savings & Loan Ass'n, 741 P.2d 542, 546 (Utah 1987). Wasatch Steel and Hurst are, according to the trial court's Findings,

parties who have or operate a business "dealing in . . . used . . . personal property" within the commonly accepted meaning of those terms.

Defendants next argue that an inadequate showing has been made that defendants knew the goods were stolen. First, the court expressly so found. [Findings of Fact ¶13; R338.] As was demonstrated in Steelco's opening Brief, that finding is amply supported by the record. In addition, Steelco proved and the trial court found the facts that give rise to a statutory presumption of that requisite knowledge under Section 76-6-408(2)(d)(2). Those four bases for the statutory presumption are identified at pages 87-89 of Steelco's opening Brief. Defendants' only response is that the findings cited therein are clearly erroneous and were not made in sufficient detail. [Defendants' Reply Brief at pp. 49-50.] No effort was made to establish that the findings were clearly erroneous. In most cases, the findings are of objective facts and are stated in graphic detail. The four bases for the statutory presumption of knowledge are, in the main, uncontested: (a) Defendants were in possession of property stolen on a separate occasion [Findings of Fact ¶10]; (b) Defendants received stolen property within the year preceding the transaction in question [Findings of Fact ¶10]; (c) Defendants acquired the material for consideration known to be far below its value [Findings of Fact ¶14]; and (d)

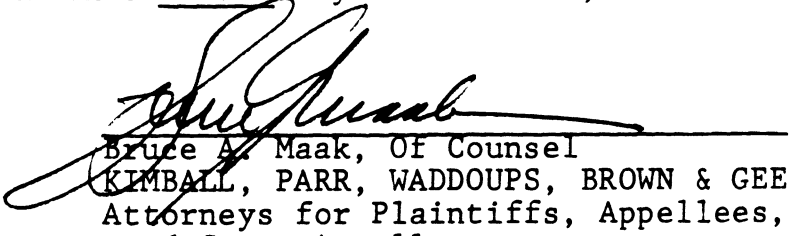
Defendants received property without requiring that the seller certify in writing as to his ownership of the property, as Lynn Hurst himself testified was the fact [R450 at 68]. Under Section 76-6-408(2), any of the four foregoing items suffice to give rise to a presumption that defendants knew or believed that the subject property was stolen or probably stolen.

CONCLUSION

The trial court found each element to defendants' liability under both the Racketeering Enterprises Act and Utah's receiving stolen property statute. The lower court rejected defendants' liability under these statutes based upon an erroneous legal interpretation of both statutes. Defendants' arguments are based upon matters generally not argued to the trial court, not found by the trial court, and not supported by the evidence.

Steelco respectfully requests that this Court grant the relief requested in the Conclusion of its opening Brief.

RESPECTFULLY SUBMITTED this 24 day of December, 1991.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Reply Brief of Plaintiffs-Appellees on Cross-Appeal was served this 26 day of December, 1991 by hand delivering on said date four (4) copies thereof to:

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